IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 432 OF 2004

Union of India ... Petitioner

Versus

Anand Padmanabha Udupa ... Respondents

Mr. T.J. Pandian for Petitioner.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : FEBRUARY 07, 2006

P.C.

. The Petitioner was working with Central Railway. The Petitioner however, was sent on deputation to Konkan Railway on 19.11.1991. During his deputation, his junior Mr. R.N. Bhattacharji was promoted in the pay scale of Rs.2375-3500. Accordingly the Central Railway wrote to Konkan Railway Corporation to provide financial benefit in the scale of Rs.2375-3500 to the Petitioner. Some time in the year 1998, Petitioner applied for being absorbed in Konkan Railway Corporation. However, Central Railway asked him to submit his resignation and as such technical resignation was given by the Respondent on 5.12.1998 which was accepted by the

Petitioner herein. From 21.4.1999, the respondent was permanently absorbed in the Konkan Railway Corporation.

. It was the case of the Respondent that considering the Next Below Rule as his junior have been given higher pay scale, he should also be given higher pay scale and his pay be fixed in that scale. As the Petitioners failed to give to the respondents the pay scale, he filed O.A. No. 893 of 2002. The learned tribunal vide its order dated 22.10.2002 was pleased to allow the Original Application. The tribunal on the perusal of the F.R. No. 30(1)(1325) and Note (4) thereto came to the conclusion that considering the F.R. No. (1325) and considering similar language in F.R. No. 30, the Petitioner would be entitled to have his pensionary benefits fixed by revising his pay and fix the last drawn notionally. At the same time, it was clear that as the respondent had not worked with Central Railway they are not entitled to pay any arrears on salary. On behalf of the petitioner, the learned counsel contends that it is only in the event the Respondent had come back to

the parent department and his junior still continued in promotional post, would be the respondent be entitled to fix his pay based on the Next Below Rule.

. On the consideration of the rule and Note (4) we are of the opinion that the order of the tribunal does not suffer from any error apparent. If the defence on behalf of the Petitioners is accepted, then it would mean that if a person is sent on deputation and his junior in his department is promoted, then a person on deputation will be denied benefits of the pay in the pay scale which his junior is drawing, for no fault of his. This would be totally arbitrary. The Note (4) which the tribunal relied upon, takes that into consideration. Once that be the case, as the construction put up by the tribunal cannot be said to be construction incapable of being put up. We therefore, do not think this to be a fit case to interfere in the impugned order in exercise of extra ordinary jurisdiction. Hence, Petition rejected. Petitioners to comply with the orders within three months from the receipt of the copy of

this order.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)